Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decision

19 CFR Part 134

(T.D. 89-66)

COUNTRY OF ORIGIN MARKING OF IMPORTED FRUIT JUICE CONCENTRATE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final country of origin marking guidance for containers of imported fruit juice concentrate.

SUMMARY: This document informs the public that Customs is modifying its interpretation of the application of country of origin marking law to imported fruit juice concentrate. Customs has previously published guidance on application of the marking law to imported orange juice concentrate. In recognition of the fact that accounting for all minor foreign sources on the label may make compliance with the marking law prohibitively expensive, orange juice processors have been permitted to comply with marking requirements by "major supplier marking", *i.e.*, if a processor obtained 75 percent or more of imported concentrate from a single source country, it was sufficient to disclose only that one source. Otherwise, all foreign sources were required to be disclosed. Further, processors were permitted to use statistics from a representative past importing period to determine their major supplier.

When Customs announced the effective date for extending the orange juice marking guidance to all imported fruit juice concentrates, it also proposed to eliminate major supplier marking as an acceptable compliance method and replace it with all sources marking. After careful consideration of the many public comments received in response to that proposal, Customs has concluded that all sources marking may be prohibitively expensive, and that foreign juice could be exempt from the marking requirement altogether if all sources marking is required. Therefore, Customs will continue to permit major supplier marking as an acceptable method of compliance but will now permit processors to list up to ten countries if they account for at least 75 percent of foreign concentrate used. Additionally, the sources listed on a juice container must now indicate the sources actually used in that lot, not the sources used in a representative past importing period.

EFFECTIVE DATE: This decision will be effective as to fruit juice concentrate entered, or withdrawn from warehouse for consumption, on or after November 30, 1989, if packaged in other than composite cans. If packaged in composite cans, foreign juice concentrate will be subject to this decision on March 1, 1990.

FOR FURTHER INFORMATION CONTACT: John Doyle, Office of Regulations and Rulings (202–566–5765).

SUPPLEMENTARY INFORMATION:

BACKGROUND

In accordance with 19 U.S.C. 1304, and 19 CFR Part 134, Customs ensures that imported fruit juice concentrate entering the U.S. in large containers, *e.g.,* tanker cars and multi-gallon drums, is properly marked to show country of origin. However, the country of origin marking requirements set forth in this document are those pertaining to labeling that must appear on packages of concentrated or reconstituted fruit juice containing imported concentrate that reach ultimate purchasers.

ORANGE JUICE RULING

In a ruling dated September 4, 1985 (C.S.D. 85–47), Customs held that containers of orange juice in frozen concentrated or reconstituted forms which contain foreign concentrate must be labeled to comply with the country of origin marking requirements of § 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304). The ruling was based on the determination that the foreign concentrate which is imported into the U.S. and used in the production of frozen concentrated or reconstituted orange juice is not substantially transformed after undergoing further processing in the U.S. including blending with other batches of orange concentrate, addition of water, oils and essences, pasteurization or freezing, and repacking. In *National Juice Products Association* v. *United States,* 10 CIT 48, 628 F. Supp. 978 (CIT 1986), the Court of International Trade held that C.S.D. 85–47 was substantively correct. The ruling has been in effect since February 1, 1987, and containers of orange juice made with imported concentrate must now indicate the foreign sources of the concentrate.

EXTENSION TO JUICES OTHER THAN ORANGE JUICE

By a notice published in the Federal Register on July 30, 1986 (51 FR 27196), Customs announced that the orange juice ruling would be extended to include all other imported fruit juice concentrate which undergoes processing in the U.S. similar to that performed on orange juice concentrate. Therefore, all frozen concentrated or reconstituted fruit juices made with foreign concentrate processed in a manner similar to that described in C.S.D. 85–47 must be marked to indicate the country of origin of the foreign concentrate.

However, before announcing the effective date for extending the orange juice rule to other juices, public comments were invited for consideration.

Effective Date of Extension Announced

On June 7, 1988, Customs published two Federal Register notices concerning country of origin marking of fruit juice containers. The first notice (53 FR 20836) announced June 7, 1989, as the effective date for extending the orange juice ruling to other juices, *i.e.*, for requiring that containers of frozen concentrated or reconstituted fruit juice which contain imported concentrate be marked to show the country of origin of the concentrate. Major supplier marking, a method of complying with marking requirements available to orange juice processors, was made available to processors of other juices. Major supplier marking permits a processor that obtains 75 percent or more of its imported concentrate from one source country to reveal only that one foreign source. If no one foreign source accounts for at least 75 percent of imported concentrate then all source countries must be disclosed.

Proposal to Eliminate "Major Supplier Marking"

The second document published on June 7, 1988, (53 FR 20869) announced the proposed elimination of major supplier marking as a method of complying with marking requirements for all fruit juice containers, including orange juice. This proposal was prompted by concerns that major supplier marking does not provide the level of information to consumers that was contemplated by 19 U.S.C. 1304, *i.e.*, full disclosure of country of origin. Also, claims were made that pesticides banned in the U.S. are used on foreign fruit that is the source of imported concentrate. If major supplier marking for fruit juice concentrate were not allowed and *all* countries of origin had to be marked on juice containers, it was claimed that the Food and Drug Administration could better trace imported concentrate and consumers could better protect themselves from potential health threats. Before making any decision on this issue, public comments were invited for consideration.

June 7, 1989, Effective Date Suspended

By notice published in the Federal Register on June 6, 1989 (54 FR 24168), the effective date for extending marking requirements to other imported juice concentrates in addition to orange was suspended from June 7, 1989. Customs thought it was in the best interests of the public to delay providing marking guidance which might soon thereafter be modified. The public was advised that final guidance would be published in the immediate future. This document is that final guidance.

Analysis of Comments

Over 100 comments were received in response to the June 7, 1988 proposal, approximately 60% of which favored retention of major supplier marking with the remaining 40% believing that fruit juice containers should list all sources.

Major Supplier Marking

Of those favoring major supplier marking, the largest subgroup was domestic processors that use foreign concentrate. They outlined the burden that would result from doing away with major supplier marking. They contend that:

(1) All sources marking would be expensive. It would require a large initial outlay for labeling equipment and a continuing cost for everchanging labels.

(2) Inventory systems for labels and for keeping concentrates separate during storage would be unnecessary except for this rule. The physical space required for storage tanks would be enormous.

(3) Elimination of major supplier marking would effectively end use of the spot market for purchases of low-cost concentrate because the processors would not have labels ready bearing names of the spot purchase countries. The spot market, it is claimed, is beneficial to consumers because the processors make purchases at a good price and pass on the savings to consumers.

(4) Showing one or two major foreign sources fulfills the requirement of letting ultimate purchasers know they are buying a foreign product; listing all sources would simply provide a "geography lesson."

(5) All sources marking is a non-tariff trade barrier.

(6) Foreign apple juice concentrate is not a health threat.

All Sources Marking

Those favoring all sources marking were of two principle subgroups; state agricultural associations such as farm bureaus, and individuals often writing on the letterhead of a small farm or orchard. The recurring arguments raised in support of all sources marking were:

(1) Major supplier marking does not adequately serve the needs of consumers who deserve to know exact sources of the products they buy.

(2) All sources marking is necessary to protect the health of consumers.

(3) All sources marking is necessary to fully comply with the letter and spirit of 19 U.S.C. 1304.

These groups favor flexibility in complying with all sources marking such as allowing various locations on a container to be used and they claim the technology exists to do the printing necessary.

RECOMMENDATIONS:

COMPLIANCE METHOD

In considering what method of compliance may be used by those processors who will now be subject to country of origin marking for juice containers, we have examined a variety of compliance levels. On the one hand, requiring 100 percent disclosure of all sources of concentrate contained in every individual container was discussed. On the other hand, the possibility was raised by some processors that marking of fruit juice containers will be so expensive as to rise to the level of being economically prohibitive and thereby exempt the containers from marking entirely. Those articles which cannot be marked after importation except at an expense that would be economically prohibitive, unless the importer, producer, seller or shipper failed to mark the article before importation to avoid meeting the requirements of 19 U.S.C. 1304, could possibly be excepted from marking by 19 U.S.C. 1304(a)(3)(K); § 134.32(o), Customs Regulations (19 CFR 134.32(o)).

ALL SOURCES MARKING *v.* MAJOR SUPPLIER MARKING

Customs has determined not to require all sources marking on containers of juice made with imported concentrate. Juice processors, primarily those processing imported apple juice concentrate, presented arguments that requiring all sources marking would necessitate elaborate new inventory systems be developed and maintained and, in some instances, would require a large inventory of labels be kept in stock to accommodate possible blends of concentrate from various countries.

In response to arguments that all sources marking would not aid the Food and Drug Administration in its efforts to monitor for pesticides, the FDA advised Customs that their pesticide monitoring efforts are based on port of entry inspection of concentrate, not point of sale labeling.

In view of the expense created by all sources marking using current marking technology, Customs has decided to retain major supplier marking as an acceptable method of compliance for marking of imported juice concentrate. However, the definition of major supplier is being modified to permit processors to list up to ten foreign sources to account for 75 percent or more of imported concentrate. We believe from consultations with those in the juice industry that in the majority of circumstances, five or fewer sources will account for at least 75 percent of foreign concentrate present in a lot, and that in virtually all cases, ten or fewer sources will account for 75 percent of the foreign concentrate. If ten sources do not amount to 75 percent of foreign concentrate, then all foreign sources must be listed. For purposes of complying with this requirement, "lot" is defined as it is in Food and Drug Administration regulations, 21 CFR 146.3(h)(1)(i), *i.e.*, "A collection of primary containers or units of the

same size, type, and style manufactured or packed under similar conditions and handled as a single unit of trade." "Manufactured or packed under similar conditions" is defined, for purposes of compliance with 19 U.S.C. 1304, as all the containers or units containing the same blend of foreign concentrates.

The listing of foreign sources must consist of the countries contributing the greatest percentages adding up to at least 75 percent. For example, processors may not skip over an "undesirable" source contributing 10 percent in order to list the next two "unobjectionable" sources contributing five percent each. However, the order within the list need not change based on ranking. For example, if a processor is blending foreign concentrates from two countries contributing 60 and 15 percent respectively, and the two countries reversed proportions, the same label could be used on both lots.

PAST IMPORTING PERIOD *v.* PRESENT SOURCES

Concerning the distinction between allowing processors to use labels that are correct based on a past importing period or requiring labels that accurately reflect the current sources of supply, we believe requiring labels to reflect the actual sources of foreign concentrate in a particular container is the only logical alternative in a marking program aimed at providing accurate information to ultimate purchasers.

Orange juice processors were permitted to use statistics from past importing periods to determine the countries to list on their current labels. Customs approved this since the supply of foreign orange juice concentrate is very steady. In regard to other juices, apple juice in particular, there is no one major source of supply and sources change more frequently as compared to orange juice. Therefore, the practice of using representative past importing periods does not apply in this situation. Customs cannot approve a marking method with the potential of allowing, for extended periods of time, labeling that would reveal none of the actual sources of foreign juice in a particular container. For example, a processor's sources of supply could completely change because of drought or political unrest making a label based on past sources of supply completely inaccurate.

Processors have stated that this requirement may greatly alter their foreign concentrate-sourcing patterns. However, this is not sufficient reason to be excepted from compliance with marking laws. Processors may have to keep a more limited supply of labels on hand, or switch to adhesive labels that can be affixed prior to distribution. Customs primary concern must be to ensure compliance with the marking laws, and we believe that no further deviation from adherence to that law should be allowed.

SUMMARY

Imported fruit juice concentrate which is imported into the U.S. and used in the production of concentrated or reconstituted fruit juice is not substantially transformed after undergoing further processing in the U.S. including blending with other batches of concentrate of the same fruit; addition of water, oils, and essences; pasteurization or freezing; and repacking. Accordingly, all such imported concentrate is subject to the country of origin marking requirements of 19 U.S.C. 1304, and 19 CFR Part 134.

Processors may use "major supplier marking" in preparing labels for containers of juice made with imported concentrate. If a processor obtains 75 percent or more of the imported concentrate used in a particular lot from ten or fewer countries, only those ten or fewer countries need be revealed.

Customs believes that the means exist for processors to comply with these marking requirements. In many cases, a blank space is left on juice containers for the imprinting or affixing of ever-changing information such as lot numbers and expiration dates. The metal caps used to seal either end of metal and composite cans are suitable areas for imprinting country of origin information. In this instance, Customs will not consider it a violation of § 134.46, Customs Regulations (19 CFR 134.46), for country of origin information to appear on the top or bottom of a metal or composite can that contains a U.S. address, or some other reference to a place not the origin of the concentrates, on the can itself. Customs also believes stickers are a viable alternative. We received comments that there is no room for sticker placement on small cans, and if such small cans are frozen, the stickers would drop off anyway. Assuming *arguendo* that stickers may not be ideal for some containers, Customs believes many types of containers will easily accommodate stickers. The argument presented against stickers did not convince us they are impractical; *e.g.,* they will easily fit on many glass containers and remain on through all normal handling.

There may be isolated situations where the marking of juice containers will be economically prohibitive. Customs will consider requests for such exemptions on a case by case basis. We will not, as has been requested, grant any sort of industry-wide exemption based on "worst case" scenarios.

DELAY OF EFFECTIVE DATE

In trying to balance the needs of consumers, domestic fruit growers and the importers and processors of fruit juice concentrate, it has been determined to delay slightly the effective date of the marking requirement outlined above.

By delaying the effective date until November 30, 1989, for containers other than composite cans, and to March 1, 1990, for composite cans, juice processors will be given adequate time to obtain properly labeled new containers.

Those processors that had taken steps to comply with the prior major supplier marking rule will have no difficulty complying with the modified version; any labels they had prepared to satisfy the original definition will satisfy the modified definition. While processors may not have known precisely what marking would be required, they have known since July 30, 1986, that marking would in fact be extended to all other imported juice concentrates in addition to orange. Since Customs has eased the major supplier rule and made it more likely that processors will be eligible to use major supplier instead of having to mark all foreign sources, we believe it proper to implement the modified marking requirements as expeditiously as possible. The effective dates established by this notice will permit processors to order proper labels.

DRAFTING INFORMATION

The principal author of this document was John E. Doyle, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: July 7, 1989.

SALVATORE R. MARTOCHE,
Assistant Secretary of the Treasury.

[Published in the Federal Register, July 13, 1989 (54 FR 29540)]

U.S. Customs Service

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., July 6, 1989.

The following are abstracts of unpublished rulings recently issued by the U.S. Customs Service. The abstracts are set forth to provide interested parties with general information regarding the types of issues currently being addressed by the U.S. Customs Service. By their inclusion herein, the rulings abstracted shall not be considered "published in the Customs Bulletin," within the meaning of section 177.10 of the Customs Regulations (19 CFR 177.10), nor do such abstracts establish a uniform practice.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

(C.S.D. 89–70)

Abstracts of Unpublished Customs Service Decisions

COMMODITY CLASSIFICATION

C.S.D. 89–70(1)—*Commodity:* Applique kits consisting of instructions, patterns, two separate pieces of woven fabric composed of man-made synthetic fibers, an irregularly shaped piece of woven cotton fabric, knit pile fabric, toy eyes, imitation pearls and a ziplock plastic bag. The applique is designed to resemble a panda. The user must supply their own backdrop for the fabric, as well as the thread and sewing machine. *Classification:* The applique kit is classified under subheading 6001.10.20, HTSUSA, which provides for pile fabrics, including "long pile" fabrics, knitted or crocheted, of man-made fibers, textile category 224. *Document:* Hqs. ruling letter 083701, dated April 21, 1989.

C.S.D. 89–70(2)—*Commodity:* Computer parts and components imported from Japan to be assembled with parts of U.S. and non-U.S. origin into a laptop computer. *Classification:* Partial mainboard assembly, HTSUSA 8473.30.40; SIMM 256K Memory Module, HTSUSA 8473.30.40; Floppy Disk Drive Unit, HTSUSA

8471.93.30; I/O Printed Circuit Board, HTSUSA 8473.30.40; Liquid Crystal Display Unit, HTSUSA 8471.92.30; Power Supply Unit, HTSUSA 8471.99.30; Keyboard Unit, HTSUSA 8471.92.20; Cable Connector, HTSUSA 8536.69.00; Cable with Connector, HTSUSA 8544.41.00; Screws, HTSUSA 7318.15.80; Nuts, HTSUSA 7318.16.00; Steel Bracket, HTSUSA 732690.90; Plastic and Metal Case, HTSUSA 8473.30.40; Lead-Acid Storage Battery, HTSUSA 8507.20.00; Nickel-Cadmium Battery, HTSUSA 8507.30.00; Disposable Type Battery, HTSUSA 8506.19.00. *Document:* Hqs. ruling letter 083956, dated April 12, 1989.

C.S.D. 89–70(3)—*Commodity:* Dress-up outfits. Children's dress-up outfits consisting of various articles including shawls, gloves, hats, socks, purses, and belts to be worn by young girls for dress-up play. Generally, they are of man-made fiber. *Classification:* The dress-up outfits are classified under subheading 9503.70.8000, HTSUSA, which provides specifically for other toys, put up in sets or outfits. *Document:* Hqs. ruling letter 083387, dated April 13, 1989.

C.S.D. 89–70(4)—*Commodity:* Fabric. A nonwoven stitch-bonded fiber fabric substrate that appears to be laminated to a separate bituminous sheet. An olefin film is laminated to the bituminous surface. The merchandise will be in the form of rolls 40 inches wide by 300 feet in length and will be used in conjunction with waterproofing products. *Classification:* The modified bitumen compound is classified under subheading 5907.00.1000, HTSUSA, textile category 229, a provision for certain laminated textile fabrics. The importation of textiles produced or manufactured in South Africa is prohibited. *Document:* Hqs. ruling letter 083647, dated April 18, 1989.

C.S.D. 89–70(5)—*Commodity:* Fabric pieces composed of textile which are cut to size to be sewn and upholstered onto furniture. The fabric is of U.S. origin and is cut in Canada and then sewn and upholstered onto furniture products in the U.S. Computer printed patterns for making a cover for a sofa are included. *Classification:* If the merchandise at issue is for use as parts of seats, it is classifiable under subheading 9401.90.5000, HTSUSA, which provides for seats and parts thereof, other, other. If the fabric pieces at issue are for use as parts of furniture other than seats, it is classifiable under subheading 9403.90.6000, HTSUSA, which provides for other furniture and parts thereof, parts, other, of textile material, except cotton. If the merchandise is composed of cotton, subheading 9403.90.8000, HTSUSA, which provides for other furniture and parts thereof, parts, other, other. *Document:* Hqs. ruling letter 083819, dated April 24, 1989.

C.S.D. 89–70(6)—*Commodity:* Face cloth. Cotton terry squares for use by airline passengers in freshening up and then discard. *Classification:* The terry squares are classified under subheading 6302.60.0030, HTSUSA, textile category 369, a provision for other toilet linen and kitchen linen, of terry toweling or similar terry fabrics, of cotton. *Document:* Hqs. ruling letter 084119, dated April 12, 1989.

C.S.D. 89–70(7)—*Commodity:* Flotation device. The aqua buoy flotation device consists of a plastic box casing that is attached to the forearm by an adjustable velcro strap designed to be worn around the wrist. The box contains a self inflating tubular flotation cushion that is composed of polyamide plastic film material. When the locking arm on the box is pushed upward, a small cylindrical gas containing unit is activated and simultaneously the unit is ejected. The compressed air cartridge inflates the plastic cushion to a 30 $\times$ 30 cm buoyant life preserver. *Classification:* The flotation device is classifiable under subheading 3926.90.75, HTSUSA, as other articles of plastics, pneumatic mattresses and other inflatable articles not elsewhere specified or included. *Document:* Hqs. ruling letter 083388, dated April 12, 1989.

C.S.D. 89–70(8)—*Commodity:* Footwear. A child's lammy suede boot. The upper of the shoe consists of a lammy suede type material, a leather-like material that is visibly coated with plastics. The shoe has a small collar area that is made up of textile. U.S. Customs laboratory analysis of this material shows that none of the fibers of the underlying textile fabric protrude through the brushed plastic layer which forms the external surface of the upper. *Classification:* The lammy suede upper of the boot at issue is considered plastics and classified under 6402.91.4030, HTSUSA. *Document:* Hqs. ruling letter 083636, dated April 11, 1989.

C.S.D. 89–70(9)—*Commodity:* Footwear. Three styles of men's footwear. Style #1 is a snow jogger with polyurethane upper, piping trim across the vamp, vinyl mudguards, partial rubber outside heel counter, EVA wedge midsole and rubber outer sole. Style #2 has a textile upper, suede overlays, PU padded collar, rubber foxing band EVA midsole and rubber outer sole. Style #3 has a textile upper, split leather overlays, padded collar and tongue, rubber toe bumper heel stabilizer, EVA midsole and rubber outers sole. *Classification:* Style #'s 2 and 3 are classifiable under subheading 6404.11.2030, HTSUSA as footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials, sports footwear, tennis shoes, basketball shoes, gym shoes, training shoes and the like, having uppers of which over 50 percent of the external surface area (including any leather accessories or reinforcements such as those mentioned in Note 4(a) to this chapter) is leather. Style #1 is classifiable under

subheading 6402.91.4015, HTSUSA, as other footwear with outer soles and uppers of rubber or plastics, covering the ankle, having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in Note 4(a) to this chapter) is rubber or plastics. *Document:* Hqs. ruling letter 081388, dated April 13, 1989.

C.S.D. 89–70(10)—*Commodity:* Footwear. Ladies dress shoes are slip-ons with plastic uppers and plastic outsoles, and decorative textile bows attached to the vamp near the toe. *Classification:* The shoes are classifiable under subheading 6402.99.1570, HTSUSA, as other misses' footwear with outer soles and uppers of rubber or plastics, other footwear, other, having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics. *Document:* Hqs. ruling letter 082737, dated April 13, 1989.

C.S.D. 89–70(11)—*Commodity:* Hats. Unfinished hats blocked to shape in Taiwan and then shipped to Canada for further processing. The hats are manufactured of circular sewed braid which is manufactured of yarns and visca under 5 mm in width. The hats are to be combined with dresses and sold as sets in the U.S. *Classification:* The hats are classifiable under subheading 6505.90.7060, HTSUSA, as hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, other, wholly or in part of braid, other with duty at the rate of 7.2 percent ad valorem, textile category 659. The cotton dresses are separately classifiable under subheading 6204.42.30, HTSUSA, textile category 336. The dresses of man-made fibers are separately classifiable under subheading 6204.43.40, textile category 636. *Document:* Hqs. ruling letter 083295, dated April 13, 1989.

C.S.D. 89–70(12)—*Commodity:* Infants' sets. Various styles of infants' sets of clothing consisting of pullovers, shirts, pants, and booties all made of 65 percent polyester, 35 percent cotton some with embroidery and some without. *Classification:* The shirts, pants, and booties of one style are classified in subheading 6111.30.5030, HTSUSA, as babies' garments and clothing accessories, knitted or crocheted, of synthetic fibers, imported as parts of a set. The garments of the various remaining styles are classifiable in subheading 6111.30.5020, HTSUSA, which provides for babies' garments and clothing accessories, knitted or crocheted of synthetic fibers, sets. Textile category 239. *Document:* Hqs. ruling letter 083944, dated April 21, 1989.

C.S.D. 89–70(13)—*Commodity:* Leather material. Imitation leather material. *Classification:* The imitation leather material is classifiable under subheading 5603.00.9020, HTSUSA, as impregnated,

coated or covered nonwovens. Textile category 223. *Document:* Hqs. ruling letter 083602, dated April 10, 1989.

C.S.D. 89–70(14)—*Commodity:* Nougat preparation. The nougat is a block material composed of 45 percent sugar and 45 percent hazelnuts and 8 percent cocoa butter and cocoa mass. It is used as a base material for fillings, flavors, and coatings for confections and pastries. Subsequent to importation it is combined with other ingredients to make the desired coating or filling. *Classification:* Nougat preparation is classifiable under the provision for other food preparations not elsewhere specified or included in subheading 2106.90.6097, HTSUSA. *Document:* Hqs. ruling letter 082423, dated April 13, 1989.

C.S.D. 89–70(15)—*Commodity:* Optical disk. The HDD optical disk flaw inspection system is an inspection system used to detect flaws in optical disks. The inspection system contains a transmission lamp, a reflection lamp, a reflection type CCD camera and a transmission type CCD camera (image sensors). *Classification:* The HDD optical disk flaw inspection system is classifiable as measuring or checking instruments, appliances, and machines, other optical instruments and appliances under subheading 9031.40.0000, HTSUSA. *Document:* Hqs. ruling letter 080294, dated April 21, 1989.

C.S.D. 89–70(16)—*Commodity:* Planning guide. The guide consists of a telephone and address indexer; a weekly planner; a note pad; plastic inserts for business cards or other cards; and a ball point pen which all fit into plastic pockets of a plastic folder case. *Classification:* The planning guide is classifiable as a set in subheading 4820.10.2010, HTSUSA, which provides for diaries and address books, bound. *Document:* Hqs. ruling letter 081591, dated April 24, 1989.

C.S.D. 89–70(17)—*Commodity:* Sheet set. The set consists of a flat bedsheet, fitted bedsheet, and two pillow cases packaged for retail sale as a set. The articles are of 52 percent polyester and 48 percent cotton, not napped, woven fabric with a floral print and are sized for a queen size bed. *Classification:* The HTSUSA provision applicable to the flat and fitted bedsheets is subheading 6302.22.2020, which provides for bed linen, of man-made fibers, other, sheets, textile category 666. The HTSUSA provision applicable to the matching pillow cases is subheading 6302.22.2010, which provides for bed linen, of man-made fibers, other, pillow cases, textile category 666. *Document:* Hqs. ruling letter 083443, dated April 11, 1989.

C.S.D. 89–70(18)—*Commodity:* Shorts. Men's shorts consisting of a woven cotton shell with a knit tricot full support liner, fully elasticized waist, a functional drawstring, a fly front with a zipper

closure and a button closure on the waistband, two quarter top side pockets and a rear patch pocket, an outer seam and rolled up cuffs. *Classification:* The shorts are classifiable under subheading 6211.11.2010, HTSUSA, which provides for men's swimwear, of cotton. *Document:* Hqs. ruling letter 083637, dated April 21, 1989.

C.S.D. 89–70(19)—*Commodity:* Table (drop-leaf table). A small shelf-like table that measures 35 inches wide and 19 inches deep and is composed of white lacquered particle board, which is chiefly composed of wood. The table is designed to be mounted on a wall so that its top can be folded down to become flush with the wall when not in use. *Classification:* The drop-leaf table is shelved furniture and is properly classifiable as other wooden furniture of a kind used in the kitchen, under subheading 9403.40.9080, HTSUSA. *Document:* Hqs. ruling letter 083435, dated April 21, 1989.

U.S. Customs Service

General Notice

TREATMENT OF INTEREST CHARGES IN THE CUSTOMS VALUE OF IMPORTED MERCHANDISE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Statement of clarification.

SUMMARY: Questions have been raised concerning the implementation of the Committee on Customs Valuation of the General Agreement on Tariffs and Trade (GATT) decision that interest charges relating to the purchase of imported goods are not to be included in the customs value of the goods. This document serves as clarification of Customs position on the treatment of interest charges in an effort to adhere to the international agreement.

BACKGROUND

On April 26, 1984, the Committee on Customs Valuation of the General Agreement on Tariffs and Trade adopted a decision concerning the treatment of interest charges in the customs value of imported merchandise. The decision is attached as Annex A. Under the decision, the interest charges are not part of the price actually paid or payable for the merchandise if certain criteria are met.

Specifically, the decision states that interest charges under a financing arrangement entered into by the buyer and relating to the purchase of the imported goods shall not be regarded as part of the customs value provided the following conditions are met:

(a) The charges are distinguished from the price actually paid or payable for the goods;

(b) The financing arrangement was made in writing;

(c) Where required, the buyer can demonstrate that

—Such goods are actually sold at the price actually paid or payable, *and*

—The claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when the financing was provided. (emphasis added)

Customs implemented the GATT decision by publication of T.D. 85–111 in the Federal Register on July 8, 1985 (50 FR 27886), effective April 25, 1985. In the T.D. Customs stated that

> Inquiries regarding the criteria in "C" shall be considered satisfied, *inter alia,* if the claimed charges for interest and principal are consistent with those usually reflected in sales of identical or similar merchandise. If the claimed amount of interest is inconsistent with that usually reflected in sales of identical or similar merchandise, or is inconsistent when compared to the level for such transaction prevailing in the country where, and at the time when the financing was provided, only that amount which is consistent shall be allowed as non-dutiable, the excess being disallowed.

It has been brought to Customs attention that this language only discusses the acceptability of the interest rate but does not discuss what is meant by the term "interest" or what is needed to demonstrate that the goods are actually sold at the price declared as the price actually paid or payable.

STATEMENT OF CLARIFICATION

Customs interprets the term "interest" to encompass only *bona fide* interest charges, not simply the notion of interest arising out of delayed payment. *Bona fide* interest charges are those payments that are carried on the importer's books as interest expenses in conformance with generally accepted accounting principles.

To demonstrate that the goods undergoing appraisement are actually sold at the price declared as the price actually paid or payable, the buyer must be able to prove, if requested, that the price actually paid or payable for identical or similar goods sold without a financing arrangement closely approximates the price paid or payable for the goods being appraised. If the buyer fails to meet this test, no authority exists for distinguishing the alleged interest payments from the price actually paid or payable for the merchandise. This does not relieve the buyer's burden to demonstrate the validity of the interest rate under criteria "C" as required by the GATT decision.

This clarification shall be effective (90 days after publication in the Federal Register.)

Dated: June 28, 1989.

R. ROSETTIE,
Deputy Assistant Commissioner,
Commercial Operations.

Attachment.

[Annex A was originally published in the Federal Register on July 8, 1985, 50 FR 27886]

ANNEX A—GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Customs Valuation

DECISION ON THE TREATMENT OF INTEREST CHARGES IN THE CUSTOMS VALUE OF IMPORTED GOODS

Adopted by the Committee on April 26, 1984

The Parties to the Agreement on Implementation of Article VII of the GATT agree as follows:

Charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods shall not be regarded as part of the customs value provided that:

(a) The charges are distinguished from the price actually paid or payable for the goods;

(b) The financing arrangement was made in writing;

(c) Where required, the buyer can demonstrate that

—Such goods are actually sold at the price declared as the price actually paid or payable, and

—The claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when the finance was provided.

This Decision shall apply regardless of whether the finance is provided by the seller, a bank or another natural or legal person. It shall also apply, if appropriate, where goods are valued under a method other than the transaction value.

Each party shall notify the Committee of the date from which it will apply the Decision.

ROBERT P. SCHAFFER,
Acting Commissioner of Customs.

Approved: June 20, 1985.
JOHN M. WALKER, JR.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, July 17, 1989 (54 FR 29973)]

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